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December 10, 2018

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

RE: Request for waiver and/or Appeal Funding year 2016
CC Docket No. 02-6

Contact:

Phillip Brautigam
Technology Director
New Kensington - Arnold School District
pbrautigam@nksd.com
PH: 724-337-4536 X1809

Billed Entity Number: 125191
Form 471 Application Numbers: 981679
Funding Request Number: 2676080

SUMMARY

On June 18, 2018, we received a Recovery of Improperly Disbursed Funds Letter, stating that due to 'FCC Directive', USAC was demanding the District repay \$13,500 from Funding Year 2014 that was improperly disbursed.

We are at a loss as to why we would be required to repay these funds, as the District received an Administrator's Decision Letter on August 2, 2017 stating that we qualified for relief under FCC Order DA-17-526, commonly known as the Jefferson-Madison Decision. A copy of the ADL is attached to this appeal.

DISCUSSION AND BACKGROUND

The District filed a FY 2014 BEAR Invoice #2279124 on October 28, 2015. However, the vendor did not certify the BEAR by the deadline. As you will recall, a vendor sign-off was still required in FY 2014.

The fact pattern of this case is identical to the Jefferson-Madison Decision, in that the District submitted the BEAR by the deadline but the service provider did not submit their portion by the deadline. The J-M Decision states:

"Given these facts, we find that it is in the public interest for us to consider the arguments in Jefferson-Madison Regional Library's petition and allow applicants who timely filed their BEAR forms to be reimbursed appropriately.³¹ We now find that under section 54.514(a) of the Commission's rules, USAC should have considered a BEAR form timely if it was submitted before the invoice filing deadline even if the service provider had not certified it before the invoice filing deadline. We therefore grant Jefferson-Madison Regional Library's Petition for Reconsideration and direct USAC to identify any BEAR forms that were rejected for lacking a service provider certification after the timely submission by the applicant, and allow for their resubmission and processing within the next 90 days.³²"

On August 2, 2017, USAC sent the District an Administration's Decision on FCC Remand – FY 2014, informing the District that we qualified for relief under FCC Order DA 17-526. The letter stated that the District had until September 1, 2017 to resubmit the BEAR for processing.

Administrator's Decision on FCC Remand - Funding Year 2014

August 2, 2017

Jeffery McVey
NEW KENSINGTON-ARNOLD DISTRICT
701 STEVENSON BLVD
NEW KENSINGTON, PA 15068-5372

Re: Applicant Name: NEW KENSINGTON-ARNOLD DISTRICT
Billed Entity Number: 125191
Form 471 Application Number: 981679
Funding Request Number: 2676080
FCC Order: 17-526
FCC Order Release Date: May 30, 2017
Invoice Due Date: **September 1, 2017**

Dear Program Participant:

You are receiving this Administrator's Decision Letter because USAC has identified you as qualifying for relief provided for in FCC Order DA 17-526 released on May 30, 2017.

In DA 17-526, the FCC directed USAC to allow applicants to resubmit invoices, or Billed Entity Applicant Reimbursement (BEAR) forms, which had been timely filed between August 2014 and July 2016 and that were rejected "based on a lack of timely service provider certification before the invoice filing deadline." The FCC directed USAC to allow for resubmission of these BEARs and processing within the next 90 days.

We have identified your BEAR form for the invoice # 2279124 where the system change prevented service providers from certifying BEARs that were pending on July 1, 2016. The remaining commitment on this Funding Request is \$13500.

Please resubmit your BEAR form for the information identified above by **September 1, 2017** for processing.

Upon receiving this letter, the District promptly resubmitted the BEAR on August 8, 2017 – well before the September 1, 2017 deadline.

We firmly believe this BEAR invoice qualifies for relief under the FCC's Jefferson-Madison Decision, and that USAC was correct when it sent the Administrators Decision Letter informing us of this relief.

A letter of appeal was sent to USAC on August 15, 2018. The appeal was denied stating that USAC "cannot grant the appeal because USAC is not authorized to waive the FCC rules."

We respectfully request the FCC to grant a waiver of the invoicing deadline rules associated with this appeal.

Even if the Commission does not agree that our exact situation does not qualify for relief under the Jefferson-Madison Decision, we respectfully request that the Commission overturn USAC's recovery efforts and grant this appeal under the Fifth Report and Order from 2004 which stated, "recovery of funds, properly committed, but paid under an erroneously applied invoice extension, "...may not be appropriate for violation of procedural rules codified to enhance operation of the E-rate program" (see [FCC 04-190](#), ¶19).

There was no waste, fraud or abuse. The services requested in this FRN were fully eligible. We fully complied with the competitive bidding requirements. The services are being delivered to eligible locations. We believe we should not be punished because our service provider neglected to follow their procedural deadlines. And we believe the Commission was attempting to grant relief to applicants in our exact situation. We respectfully request that the Commission now bring this unfortunate saga to rest and overturn the recovery of funds sought by USAC.

Thank you for your consideration. If you have any questions, please contact us.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Phillip Brautigam', with a long horizontal flourish extending to the right.

Phillip Brautigam
Technology Director
New Kensington - Arnold School District
pbrautigam@nkasd.com